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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 355

CLAUDE VERNON COOPER, - - - *Petitioner*

vs.

ELIZABETH D. COOPER, - - - *Respondent*

MOTION

1. Comes the petitioner, Claude Vernon Cooper, by counsel, and moves this Court for the entry of an order as to the costs of the above-styled case, pursuant to Rule 38, Paragraph 8, of the Rules of this Court.

2. In support of such motion petitioner states that the sole question involved in the above-styled case was whether a certain judgment and decree of the Circuit Court of Volusia County, Florida, as affirmed by the Supreme Court of Florida, was given and adjudged full faith and credit by the Court of Appeals of Kentucky in its opinion and judgment in the above-styled cause, and in accordance with the Full Faith and Credit Clause of the Constitution of the United States. Numerous other questions had been presented in the trial of this case below, and many depositions, affidavits, orders and similar matters filed and entered

of record in this case, which had no bearing, materiality or effect on the issue which petitioner sought to present to this Court.

3. Pursuant to Rule 38, Paragraph 8, of the Rules of this Court, counsel for petitioner, in an effort to omit from the printed record to be presented to this Court all matter not essential to a consideration of the question raised in the petition for certiorari, prepared a stipulation for omission from the printed record of such irrevelant matter, and on July 17, 1952, submitted such stipulation, by mail, to counsel for respondent for consideration and execution. Such stipulation was as follows:

"SUPREME COURT OF THE UNITED STATES

CLAUDE VERNON COOPER, - - - - *Petitioner*

vs.

ELIZABETH D. COOPER, - - - - - *Respondent*

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that for the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on its merits, the printed record shall consist of the following:

1. Petition	5
2. Summons for Peoples Bank	11
3. Order appointing Warning Order Attorney	12

4. Order filing report of Warning Order Attorney 12
5. Report of Warning Order Attorney 13
6. Order filing answer of C. V. Cooper 14
7. Answer of C. V. Cooper 14
8. Order filing answer of Peoples Bank 16
9. Answer of Peoples Bank 17
10. Motion of Elizabeth D. Cooper for allowance 18
11. Order filing motion of Elizabeth D. Cooper for allowance 18
12. Reply 28
13. Order filing Response of C. V. Cooper to motion for allowance 30
14. Response of C. V. Cooper to motion for allowance 30
15. Order—Judge Helm's disqualification 32
16. Designation of Special Judge 32
17. Order—July 6, 1945 35
18. Agreed Order—(Aug. 23, 1945) 37
19. Agreed Order—(Nov. 2, 1945) 327
20. Supplemental Answer of C. V. Cooper 687
21. Exhibit A—with Supplemental Answer 689
22. Exhibit B—with Supplemental Answer 695
23. Exhibit C—with Supplemental Answer 700
24. Second Amended Answer of C. V. Cooper 763
25. Mandate—Supreme Court of Florida 764
26. Reply to Supplemental and Amended Answer 766
27. Order—Sept. 30, 1948 768

28. Judgment—Sept. 30, 1948 768
29. Judgment—Court of Appeals—May 26, 1949 783
30. Opinion of Court of Appeals—May 26, 1949 784
31. Order overruling petition for rehearing 804
32. Mandate 806
33. Order 821
34. Order of submission 1019
35. Judgment (Nov. 26, 1951) 1028
36. Order—Court of Appeals 1030
37. Order—Court of Appeals—reversing 1041
38. Opinion 1042
39. Order filing petition for rehearing 1054
40. Petition—caption and page 15 to 20, inclusive 1055
41. Order overruling petition for rehearing 1059
42. Order granting stay 1060
43. Certificate of Clerk 1068

It is further stipulated and agreed that either of the parties may refer in their briefs and arguments to the record filed in the Supreme Court, including any part thereof which has not been printed.

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Attorneys for Petitioner

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Attorneys for Respondent

July ....., 1952"

Office carbon of the letter of transmittal to counsel for respondent is as follows:

"July 17, 1952

Judge S. S. Willis
Attorney at Law
Ashland, Kentucky

Re: Cooper v. Cooper

Dear Judge Willis:

We have obtained from the Clerk of the Court of Appeals a copy of the record in the Cooper Case, and intend to file in the office of the Clerk of the Supreme Court in a few days.

We enclose for your signature stipulation with respect to the parts of the record to be printed.

The parts of the record indicated to be printed constitute substantially all of the record except the depositions and orders considered not material, and we think constitutes all of the record material to a determination of the constitutional question which we propose to raise.

Will you please give this your immediate attention, and let us hear from you as soon as possible.

Yours respectfully,

MR:j
enc."

4. Thereupon, counsel for respondent were instructed by respondent, arbitrarily to refuse the stipulation proposed by petitioner or any other stipulation for the omission of irrevelant matter from the printed record in this case. Such refusal was communicated to counsel for petitioner by counsel for respondent by letter, dated July 25, 1952, as follows:

"July 25, 1952

Judge Leslie W. Morris
Frankfort, Kentucky

Dear Judge Morris:

After talking with you this afternoon on the 'phone and after going over such parts of the record as I have in connection with your proposed stipulation I called the attention of the plaintiff, Mrs. Cooper and members of her family to the matter, explaining that you are about to file a petition for Writ of Certiorari in the Supreme Court, and that it will be necessary to have the record or parts of the record printed for the court. Mrs. Cooper and her family object to any stipulation concerning the parts of the record to be printed. I have called attention to the size of the record and the probable cost of printing it. However, I am instructed not to stipulate. It appears I have no discretion in the matter.

I called Judge Willis and consulted with him and he advised me that unless we have the consent of our client we cannot enter into a stipulation. I understand fully what this means in the matter of cost, but I know of no way I can help under the circumstances.

Very truly yours,

(s) W. E. FAULKNER
W. E. FAULKNER

WEF/gb"

5. The effect of respondent's refusal to stipulate for the omission of such irrevelant matter from the printed record was to increase petitioner's costs in the action, drastically, unnecessarily and unfairly. If respondent had accepted the stipulation proposed by petitioner, then the printed record in this case before this Court would have consisted of not more than 85 pages, and the cost of printing the same would have not been more than $433.50. By reason of respondent's

refusal to accept such stipulation, petitioner was required to have printed the entire record of a length of 785 printed pages, and at a cost of $4,022.96. Such increase in the length of the printed record and in the cost of printing the same, was not necessary, was not based upon any contention that the stipulation proposed by the petitioner was inadequate; inflicted undue burden on this Court; and unjustifiably increased petitioner's costs in this action by $3,589.46.

6. Petitioner, therefore, sincerely believing that such facts call for the exercise by this Court of its power under Rule 38, Paragraph 8, of the Rules of this Court, moves this Court to make and enter an order taxing to respondent, as costs recoverable by petitioner, the sum of $3,589.46, or such other sum as the Court shall deem proper under the circumstances.

Respectfully submitted,

LESLIE W. MORRIS,

MARION RIDER

Counsel for Petitioner